

II. REMARKS

In response to the Official Action, the Applicant has responded to the drawing objection by submitting a corrected drawing sheet (in Figure 4, the leadline from "20" is now directed to the "seam" and not the "corner") and amended the claims by rewriting claims 1, 2, 4-7, 10, 11, and 13-15. Claims 1-20 are now pending in the application. Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and the following remarks.

Claims 1-9 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner states that regarding the Applicant's claim 1, it is questioned how the band mounted to the cover is located entirely within the bottom of the core if it is to cover the core.

Claim 1 has been amended to clarify the Applicant's invention and is believed allowable as amended because the claim now includes the language suggested by the Examiner, *i.e.*, "...within the perimeter of the bottom of the core." Claims 2-9 as written depend on claim 1 and are believed allowable as filed or amended.

The Examiner also states that regarding the Applicant's claims 2, 4, and 5, it is noted that if a core is in the shape of a six-sided block, this shape would include eight corners, not four. Claims 2, 4, and 5 have been amended to clarify the Applicant's invention and are believed allowable as amended because the claims now include the language suggested by the Examiner, *i.e.*, "eight" corners instead of "four."

The Applicant respectfully argues that the prior art relied upon by the Examiner constitutes nonanalogous art, because the prior art references are from such diverse arts (*i.e.*, building construction sets for children and nursing pillows) as to the Applicant's invention (*i.e.*, therapeutic and rehabilitative accessories for pets), that a person of
5 ordinary skill in the claimed art would not look to those diverse arts to solve the problem addressed by the claimed invention. "Section 103 ... does not require us to presume full knowledge by the inventor of prior art *outside* the field of his endeavor." *In re Winslow*, 151 USPQ 48 at 287 (CCPA 1966). The Applicant therefore argues that the arguments offered by the Examiner do not establish a *prima facie* case of obviousness
10 because the person of ordinary skill on the claimed art would never be apprised of the remote art.

Claims 1-20 stand rejected under 35 USC 103(a) as being unpatentable over Chang (U.S. Patent No. 5,964,634) in view of Crowley (U.S. Patent No. 6,061,854). The
15 Examiner states that the Applicant's claims are unpatentable because Chang discloses a foam core of three-dimensional shape having a relatively high coefficient of friction, a cover removably mounted to said core being constructed of a fabric having a relatively high coefficient of friction and having a plurality of seams arranged therein so as to define a bag shape with an opening and a plurality of fasteners. However, Chang does
20 not positively disclose the foam core is high-density foam. The Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to use high-density foam, because it has been held to be within the general

skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claim 1 has been amended to clarify the Applicant's invention; however, these clarifications do not pertain to the frictional qualities of the chosen materials. The

5 Applicant respectfully points out that Chang's foam core is not necessarily of a high degree of friction. In fact, Chang makes no mention of the frictional qualities of his foam core. Although he does refer to the shear friction between blocks (column 6, line 38), he is referring to the *covered* blocks, not the foam core. Conversely, the Applicant's invention uses the high coefficient of friction between the foam core of one block and
10 the carpeted floor or the cover of an adjacent block to prevent lateral sliding (page 3, line 8).

In addition, the Applicant respectfully points out that high-density foam would specifically *not* be suitable for Chang's intended use. The stated purpose for Chang's invention is to provide a kit for children to build objects from block-like construction
15 pieces, and to achieve that goal, Chang specifically claims the use of soft, depressible, flexible foam material (see Chang's Abstract, Summary col. 3, line 49, Description col. 5, line 25, and col. 7, lines 8, 9, and 18, as well as the limitations of *all* claims). Conversely, the Applicant's high-density foam material is rigid enough so as to support the weight of a large dog and provide a safe, comfortable stair surface while keeping its
20 three-dimensional shape. High-density foam accomplishes this purpose. More specifically, Chang's blocks must be soft and depressible enough to be crushed and pulled through the slit opening of the cover (see Chang's figure 7). High-density foam would most certainly *not* be depressible enough to fit through the slit.

The Examiner also states that Chang discloses the claimed invention except that Chang discloses the use of hook and loop fasteners to secure the cover to the core at the opening instead of an elastic band; that Crowley shows that elastic bands and hook and loop fasteners are equivalent structures known in the art for fastening covers to foam cores; that therefore, because these two fasteners were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute an elastic band for a hook and loop fastener.

Claim 1 has been amended to clarify the Applicant's invention as to the bag closure around the foam core leaving a substantial part of the core bottom exposed. No new matter has been added for there is support in the Applicant's specification as filed on page 3, lines 4-9, and page 6, lines 8-14. The claim is believed allowable as amended because neither Chang nor Crowley claims, discloses, or suggests that any one side of the foam core should be left uncovered and exposed for any purpose (including friction with an adjacent surface). Instead, both Chang's and Crowley's devices comprise covers that specifically cover *all* of the foam core and fasten completely around such core.

The Applicant respectfully points out that Chang's hook-and-loop fasteners are not used to secure the cover to the core at the opening thereof, but instead are used to secure the cover of one block to the cover of an adjoining block. (See Chang Summary col. 3, lines 38-43, Description col. 6, lines 38-42, and specification and figures generally.) Likewise, Crowley's snap closures (or in the alternative, hook-and-loop fasteners or elastic) are not used to secure the cover to the core at the opening thereof, but instead are used to secure one part of the cover to another part of the cover when

there is excess cover due to the use of less than all the lap cushions (see col. 6, lines 1-11).

The Examiner states that regarding claim 2, Chang as modified discloses the foam core is in the shape of a regular six-sided block. Claim 2 is believed allowable as
5 filed or amended because it depends on the amended claim 1.

The Examiner states that regarding claim 3, while Chang as modified does not disclose the elastic band is located roughly within two inches of the edge of the bottom, it would have been obvious to one having ordinary skill in the art at the time the
10 invention was made to place the band within two inches of the edges of the bottom, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Claim 3 is believed allowable as filed or amended because it depends on the amended claim 1 and is an expression of the optimum proportion (determined by the
15 inventor between the covered area and uncovered area on the bottom side of the core being approximately 1/3 (see page 6, line 14).

The Examiner states that regarding claim 4, Chang as modified discloses the core is in the shape of a block and the cover includes four seams spaced evenly around
20 said opening such that when the cover is fitted onto the core, the seams correspond to the corners of the block. The Examiner states that regarding claim 5, reference the above arguments. Claims 4 and 5 are believed allowable as filed or amended because they depend on the amended claim 1.

The Examiner states that regarding claim 6, Chang as modified discloses hook and loop fasteners strategically mounted on the cover. Applicant's claim 6 has been amended to clarify the invention, *i.e.*, to make it clear that the hook-and-loop fasteners are *permanently* mounted on the cover. No new matter has been added for there is support in the Applicant's specification as filed on page 3, lines 13-17, page 5, lines 10-14, and page 6, line 23 through page 7, line 4. Claim 6 is believed allowable as amended, because Chang neither discloses, claims, nor suggests that the fasteners be *permanently* mounted. Conversely, Chang teaches away from *permanently* mounting such fasteners and very specifically points out the disadvantages, as he sees them, of such *permanent* mounting. (See Chang Background col. 1 line 29 - col. 3, line 26.) Chang's stated disadvantages include: limiting the number of possible configurations, being unpleasant to view or touch, and causing frustration to the assembler.

The Examiner states that regarding claim 7, Chang as modified discloses the invention substantially as claimed with exception of the fasteners being located on the elastic band and it would have been obvious to one having ordinary skill in the art at the time the invention was made to put the fasteners on the elastic band, since it has been held that rearranging parts of an invention involves only routine skill in the art. Claim 7 has been amended to depend from claim 6 and is believed allowable as amended.

The Examiner states that regarding claims 8 and 9, while Chang as modified does not positively disclose the foam core having the shape of a regular right wedge or

a six-sided trapezoidal block, it is disclosed that the foam core comprises a piece of any geometrical shape, and it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the core in the shape of a right wedge or a trapezoid since it was known in the art that these are considered geometrical shapes.

- 5 Claims 8 and 9 are believed allowable as filed because they depend from claim 1 which has been amended to clarify the Applicant's invention.

The Examiner states that regarding claim 10, in addition to the above arguments, Chang as modified further discloses a second step being removably mounted to a first
10 step such that the bottom of the second step is adjacent the cover of the first step and the fasteners are engaged. Claim 10 has been amended to clarify the Applicant's invention and is believed allowable as amended for the reasons stated in the arguments above, and also because Chang neither discloses, claims, nor suggests that the core should ever come into contact with the carpeted floor or the cover of an adjacent block.
15 Indeed, Chang specifically limits that his blocks are to be *completely* covered by the cover and that only the *covers* of adjacent blocks should contact each other. Conversely, the Applicant's invention relies at least partially on the lateral friction between the core of one block and the carpeted floor or cover of the adjoining block, and therefore, there must be a substantial portion of the bottom of the core left
20 uncovered and exposed in order to make this core-cover contact with the adjoining block.

The Examiner states that regarding claim 11, Chang as modified discloses the fasteners comprise hook and loop fasteners. Claim 11 has been amended to clarify the Applicant's invention and is believed allowable as amended for the reasons stated in the arguments above and because it depends from amended claim 10.

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The Examiner states that regarding claim 12, Chang as modified discloses each hook and loop fastener being mounted such that the portions of each section will mate upon assembly. Claim 12 is believed allowable as originally filed for the reasons stated in the arguments above and because it depends from amended claims 10 and 11.

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The Examiner states that regarding claim 13, Chang as modified discloses a third step. Claim 13 has been amended to clarify the Applicant's invention and is believed allowable as amended for the reasons stated in the arguments above and because it depends from amended claims 10 and 11.

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The Examiner states that regarding claims 14 and 15, Chang as modified discloses the apparatus as claimed and the method of use is inherent in the operation thereof. Claims 14 and 15 have been amended to clarify the applicant's invention and are believed allowable as amended for the reasons stated in the arguments above.

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The Examiner states that regarding claims 16-20, Chang as modified discloses the invention and inherent method as claimed, but does not positively disclose the shape of the configuration; however, it would have been obvious to one having ordinary

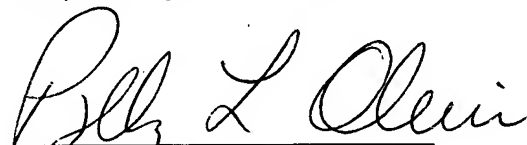
skill in the art at the time the invention was made to arrange the components as claimed, since it has been held that rearranging parts of an invention involves only routine skill in the art. Claims 16 through 20 are believed allowable as originally filed for the reasons stated in the arguments above and because they depend from the
5 amended claim 15.

In light of the foregoing, claims 1, 2, 4-7, 10, 11, and 13-15 as amended and claims 3, 8, 9, 12, and 16-20 as originally filed are in condition for full allowance, and that action is respectfully requested.

10 If the Examiner believes that a phone interview would be helpful, he is respectfully requested to contact the Applicant's attorney, Polly Oliver, at (253) 929-1534.

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15 Respectfully Submitted,



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